this purpose he gives, either directly or by implication, authority to the garage proprietor to test the car after repairs, and when the car is being tested on the road, it is being used for and on behalf of the owner i.e. the policyholder and therefore for the purpose of the policyholder, the purpose being, as already stated, to make sure that it is in good running order. Such use, in our opinion, cannot be said to be a use "for a purpose in connection with the motor trade" in the proper sense of the expression. Buhagiar J. has in *Official Administrator* v. *China Insurance Co., Ltd.* given a good example of a use for a purpose in connection with the motor trade and another example is to be found in *Gray* v. *Blackmore.*[4]

For all these reasons we are of the opinion that at the time of the accident, the car was not being used outside the limitations as to use in Policy No. NT/MC. 696379 issued to Madam Tay by the defendant company, and the appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *S.K. Lee & Co.; Murphy & Dunbar.*

PUBLIC PROSECUTOR v. SUBRAMANIAM

[A.Cr.J. (Abdul Aziz J.) November 25, 1968]
[K.L. — Criminal Appeal No. 44 of 1968]

Penal Code, s. 325 — Voluntarily causing grievous hurt — Evidence — Medical report — X-ray film — Radiographer not called — Criminal Procedure Code (Cap. 6), s. 399.

The respondent was charged under section 325 of the Penal Code. At the close of the prosecution case the president discharged and acquitted him on the ground that as the radiographer was not called there was no evidence that the fracture shown on the X-ray film was that of the complainant. In passing the president remarked that the case was poorly investigated and no statements were taken from independent witnesses. Since these independent witnesses were not called to give evidence, it was right he should also invoke section 114(g) of the Evidence Ordinance, 1950.

Held: as the medical report was properly admitted as evidence and the report clearly showed the injuries sustained, that was sufficient to warrant a conviction. The fact that the contents of the report have not been proved to the hilt matters little.

Per Abdul Aziz J.: "As regards the observation of the learned president, I feel that such an observation that the case was not properly investigated is uncalled for and is strictly outside the duty of the learned president. Not having seen the investigation papers, it is hardly right for the learned president to make such comments. His concern is merely to decide whether or not a *prima facie* case has been made out to justify calling upon the defence. Whether or not to call the so-called independent witnesses is according to the long line of cases a discretion for the prosecution. These cases show that it is not incumbent on the prosecution to call every witness present at the scene."

[Editorial Note: Reference may be made to *Harjit Singh* v. *R.* [1963] M.L.J. 287.]

MAGISTRATE'S CRIMINAL APPEAL.

Hashim bin Majid (Deputy Public Prosecutor) for the appellant.

M. Segaram for the respondent.

Abdul Aziz J. (delivering oral judgment): This is an appeal by the learned deputy public prosecutor against the order of acquittal and discharge made by the learned president, sessions court, Klang, on the 8th day of November, 1967. The respondent was charged in the sessions court as follows:—

"That you on 27.6.67 at about 6.45 p.m. at Kampong Bukit Jeti, Kampong Jawa Road, Klang, in the State of Selangor, voluntarily caused grievous hurt to Loganathan s/o Packirisamy and that you have thereby committed an offence punishable under section 325 of the Penal Code."

The complainant's wife, his eldest and younger sons gave evidence that the accused hit the complainant with a stick. The medical report shows that the complainant suffered a fracture of the skull. At the close of the prosecution, the learned president discharged the accused on the sole ground that since the radiographer was not called there was no evidence that the fracture shown on the X-ray film was that of the complainant. Consequently he held that there was no *prima facie* case of grievous hurt. In passing he remarked that the case was poorly investigated. No statements were taken from independent witnesses. Since these independent witnesses were not called to give evidence, it was right he should also invoke section 114(g) of the Evidence Ordinance.

In my view the learned president erred in discharging the respondent on the ground that the radiographer was not called. He seemed to have lost sight of the fact that the medical report was properly admitted as evidence under section 399 of the Criminal Procedure Code and that report clearly showed that the complainant suffered a fracture of the skull. The fact that the contents of the report have not been proved to the hilt matters little. In any event under section 399 it is a duty of the respondent to give notice if it requires such strict proof.

As regards the observation of the learned president, I feel that such an observation that the case was not properly investigated is uncalled for and is strictly outside the duty of the learned president. Not having seen the investigation papers, it is hardly right for the learned president to make such comments. His concern is merely to decide whether or not a *prima facie* case has been made out to justify calling upon the defence. Whether or not to call the so-called independent witnesses is according to the long line of cases a discretion for the prosecution. These cases show that it is not incumbent on the prosecution to call every witness present at the scene.

The record of the case is also very unsatisfactory. Some of the documentary exhibits were not included in the record at all. There is so much cancellation and substitution in the record to make it very uncertain what evidence had, in fact, been adduced at the trial.

In the circumstances, I would allow the appeal and order a re-trial.

Appeal allowed. Re-trial ordered.

Solicitors: *Segaram & Co.*

VETHANAYAGAM v. KARUPPIAH & ANOR.

[F.C. (Azmi L.P., Ong Hock Thye C.J. (Malaya) & Suffian F.J.) December 9, 1968]

[K.L. — Federal Court Civil Appeal No. X.22 of 1968]

Societies — Political party — Branch election — Whether unlawful — Declaration — Injunction — Societies Ordinance, 1949 and Societies Act, 1966.

The plaintiff sued the defendants (on behalf of themselves and all other members of the branch committee of the Kampong Pandan branch of the Malaysian Indian Congress (hereinafter referred to as the M.I.C.)), being the persons elected as chairman and vice-chairman at an annual general meeting of the Kampong Pandan branch held on October 15, 1967 — maintaining that (a) the Kampong Pandan branch purportedly formed on October 15, 1967 was not formed pursuant to the M.I.C. constitution; (b) the persons or the majority of them who attended the meeting were not persons who had been enrolled as members of the M.I.C.; (c) the persons who voted were not entitled to become members under the M.I.C. constitution; and (d) the Kampong Pandan branch was an illegal body *ultra vires* the M.I.C. constitution. The plaintiff sought various declarations *inter alia* to declare the election void and an injunction to restrain the defendants from exercising the powers of and/or actng in the capacity of members of the branch committee. Before the case came up for hearing the plaintiff took out a motion for an order restraining the defendants from infringing or violating the M.I.C. constitution and from acting any further as members pending the disposal of the suit. The motion came up before Raja Azlan Shah J. who in dismissing it held that at the time of the meeting of October 15, 1967 the branch was an unlawful society under the Societies Act, 1966, and consequently the court would not lend its aid to the plaintiff in granting an injunction to restrain the defendants from infringing or violating the M.I.C. constitution. On appeal,

Held: (1) by the time the motion came up for hearing on March 1, 1968 the Kampong Pandan branch of the M.I.C. had ceased to be an unlawful society;

(2) the plaintiff was at the time of the annual general meeting on October 15, 1967 a member of the M.I.C.;

(3) as there was no evidence of the plaintiff's right of property having been affected, the learned judge was right in refusing to issue the injunction sought, assuming that the Kampong Pandan branch was an unlawful society;

(4) the court should not order an interim injunction because since the judgment fresh elections had been held. Justice of the case would be met if the appeal were to be dismissed with no order as to costs.

Cases referred to:—

(1) *Tharmalingam* v. *Sambanthan* [1961] M.L.J. 63.

(2) *Soh Hood Beng* v. *Khoo Chye Neo* [1896], 4 S.S.L.R. 115.

(3) *Greenberg* v. *Cooperstein* [1926] Ch. 657.

(4) *Soh Ah Suan* v. *Ang Huat Chwee & Anor.* [1937] M.L.J. 109.

(5) *Ramdas Khatau & Co.* v. *Atlas Mills Co. Ltd.* A.I.R. 1931 Bombay 151.

(6) *Emperor of Austria* v. *Day* 45 E.R. 861, 875.

FEDERAL COURT.

Lim Kean Chye (*S. Kulasegaran* with him) for the appellant.

Dato' Athi Nahappan (*D.P. Vijandran* with him) for the respondents.

Cur. Adv. Vult.

Suffian F.J.: The Malaysian Indian Congress (hereinafter referred to as the M.I.C.) was a lawful society duly registered under the Societies Ordinance, 1949 (F.N. No. 28 of 1949). Its objects are principally "to safeguard and promote the political, economic, educational, cultural and social interests of Indians in Malaya (later Malaysia)" and also "to promote and maintain inter-racial goodwill and harmony" (Article 4). The national organization has its headquarters in Kuala Lumpur and is controlled by the Central Working Committee. It has branches in the different States of the country and in the States it has local branches, one of them being at Kampong Pandan, Kuala Lumpur. In 1964 the plaintiff was treasurer of the Kampong Pandan branch.

This branch held an annual general meeting on 31st May, 1964, but owing to some rowdy elements this meeting was frustrated and it thus became necessary under the Constitution of the M.I.C. for the State branch to take over the responsibilities of the Kampong Pandan branch. However, no action was taken by the State branch as required under the Constitution to collect subscriptions or to hold any annual general meeting until 1967. Towards the end of 1967 steps were taken by the State branch to put new life into the Kampong Pandan branch by renewing the membership of old members and recruiting new members. Accordingly on 15th September, 1967, the plaintiff signed an application to become a member, Exhibit D.3 attached to the first defendant's affidavit dated 27th January, 1968. The plaintiff was given a receipt on the same day.

On 15th October, 1967, the Kampong Pandan branch held an annual general meeting and also an election of members of its committee. As it happened, the plaintiff was not elected to any office. Mr. A.J. Karuppiah, the first defendant, was elected chairman and Mr. N. Manickam, the second defendant, vice-chairman of the branch committee.